

BEFORE THE BITTERROOT CONSERVATION DISTRICT

PUBLIC HEARING PERTAINING TO)
BITTERROOT CONSERVATION) VERIFICATION STATEMENT
DISTRICT'S DECLARATORY RULINGS)
ON SPRING (LITTLE) CREEK)
)

_____, being duly sworn, deposes and says that
the attached statement, data and/or information is true to the best of my knowledge.

Dated this ____ day of _____, 2009.

Subscribed and sworn to before me this ____ day of _____, 2009.

Name (printed):
Notary Public for the State of Montana
Residing at: _____, Montana
My commission expires: _____

BEFORE THE BITTERROOT CONSERVATION DISTRICT

PUBLIC HEARING PERTAINING TO)	
BITTERROOT CONSERVATION)	SCHEDULING ORDER
DISTRICT'S DECLARATORY RULING)	FOR PUBLIC HEARING
ON SPRING (LITTLE) CREEK, A.K.A.)	
WOODS DITCH)	

At its January 13, 2009 regular board meeting, the Bitterroot Conservation District (hereinafter referred to as BCD) accepted a petition from Diane Thomas-Rupert, Richard Smith, Ellison Cattle Company, Dan Clagett, Jay Meyer, and Water Rights, Inc. (herein jointly referred to as Petitioners) requesting a declaratory ruling pertaining to BCD's jurisdiction on Spring (Little) Creek a.k.a. Woods Ditch (hereinafter referred to as the "watercourse"). The petition is filed pursuant to Mont. Code Ann. § 75-7-125 and the implementing rules adopted by the BCD and in effect as of November 30, 2004 (hereinafter BCD Rules).

The issue:

The BCD claims jurisdiction on Spring (Little) Creek, a.k.a., Woods Ditch and requires persons doing work on it to comply with the streambed and land preservation act (310 law). The 310 law applies to projects that alter or modify natural perennial flowing streams. The petitioners question whether the watercourse fits within the jurisdictional definitions, which are:

75-7-103(6) "Stream" means any natural, perennial-flowing stream or river, its bed and immediate banks unless designated by district rule as not having significant aquatic or riparian attributes in need of protection or preservation under 75-7-102 (the 310 law policy).

ARM 36.2.402(7) "Natural perennial-flowing stream" means a stream, which in the absence of diversion, impoundment, appropriation, or extreme drought, flows continuously at all seasons of the years and during dry as well as wet years.

If the BCD determines the watercourse is a stream, the petitioners asked BCD to assess whether the waterway has aquatic ecosystems worthy of protection under the 310 law. Since the BCD must make this determination under another statutory authority, the BCD will not address this question at this time. In addition, the petitioners asked the BCD to address whether the water commissioner may turn off the headgate supplying water to "this ditch system and regulate flows as has been done for the last 140 years." Since this question is outside the BCD authority, the BCD will not address this question.

The BCD determined the issue of whether the watercourse is a natural perennial-flowing stream to be of significant public interest at its January 13, 2009 meeting. The BCD will carry out a public process, which includes a schedule to submit written statements, data, and information and a public hearing to gather information on the matter. The BCD has appointed Laurie Zeller,

Resources Specialist, Department of Natural Resources and Conservation, as the hearings officer.

The hearing and information submittal schedule:

Pursuant to Montana Code Annotated § 75-7-125, the BCD will hold a public hearing on April 27, 2009, at the Legion Hall, corner of Meyer Lane and Middle Burnt Fork Road, at 7:00 p.m. Prior to the hearing, according to the schedule below, interested persons will be provided a reasonable opportunity to submit written statements, data, and information, including rebuttal information, and to view the watercourse from public access sites:

February 24, 2009 – public access site visit. Interested person should meet at the Legion Hall corner of Meyer Lane and Middle Burnt Fork Road, Stevensville, MT., 12:00 p.m.

March 16, 2009 – all written statements, data, and information must be submitted to BCD (submit original and 3 copies)

March 23, 2009 – written materials submitted to BCD will be available for public inspection (see below for location)

April 20, 2009 – all written rebuttal statements, data, and information must be submitted to BCD (original and 3 copies)

April 27, 2009 – Public Hearing. Public comments to be heard at the Legion Hall, corner of Meyer Lane and Middle Burnt Fork Road, Stevensville, MT., at 7:00 p.m.

All written statements, data, and information must be verified. A copy of the verification form is available from the BCD office and on the Department of Natural Resources and Conservation's website: www.dnrc.mt.gov. All oral statements must be under oath or affirmation.

Information submittal process:

An original and three copies of all written statements, data, and information, along with the verification form, must be submitted to the BCD by the above deadlines at 1709 North First Street, Hamilton, Montana 59840, (406) 363-5010. All materials will be available for public inspection at the BCD office and Stevensville Library, from March 23, 2009 – April 27, 2009. Copies will be provided upon request at a cost of .20 per page.

This is not a contested case under the Montana Administrative Procedures Act.


Laurie Zeller, Hearings Officer

2-4-09
Date

**PUBLIC NOTICE
SPRING (LITTLE) CREEK, AKA WOODS DITCH
NEAR STEVENSVILLE**

The Bitterroot Conservation District (BCD) will conduct a public hearing on April 27, 2009 in Stevensville to hear public comments prior to making a declaratory ruling pertaining to whether Spring (Little) Creek is a natural perennial-flowing stream as it is defined in the Natural Streambed and Land Preservation Act.

A site visit of the waterway using public access vantage points has been scheduled for February 24, 2009. Individuals interested in participating should meet at the Legion Hall corner of Meyer Lane and Middle Burnt Fork Road, at 12:00 p.m.

Interested persons are encouraged to submit written statements, data, and information to the BCD, 1709 North First Avenue, Hamilton, MT 59840 (406) 363-5010 by March 16, 2009. Rebuttals to information submitted to the BCD may be sent to the above address by April 20, 2009. Written materials must be verified. A copy of the verification form can be obtained from the BCD office or the DNRC website: www.dnrc.mt.gov.

For a complete schedule, contact Julie Ralston, Administrator, BCD at 406-363-5010x101.